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District Counsel

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re
**TULARE LOCAL HEALTHCARE
DISTRICT, dba TULARE
REGIONAL MEDICAL CENTER,**

Debtor.

Tax ID #: 94-6002897
Address: 869 N. Cherry St.
Tulare, CA 93274

CASE NO. 17-13797

Chapter 9

DC No.: WW-25

Date: January 25, 2018
Time: 9:30 a.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13
Judge: Honorable René Lastreto II

**MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY
CONTRACT PURSUANT TO STIPULATION
(PHOENIX HEALTH SYSTEMS)**

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MOTION FOR ORDER AUTHORIZING ASSUMPTION OF
EXECUTORY CONTRACT PURSUANT TO STIPULATION

1 To The Honorable United States Bankruptcy Judge:
2
3 Tulare Local Healthcare District, dba Tulare Regional Medical Center ("Debtor" or
4 "TRMC") hereby moves this court for an order pursuant to 11 U.S.C. §§ 365 and 901, as
5 complimented by FRBP 6006, to allow assumption of that certain executory contract
6 with Phoenix Health Systems, a division of Medsphere Systems Corporation
7 ("PHOENIX"), for integrated information technology services (as defined below, the
8 "Contract"), pursuant to the Stipulation for Assumption of Executory Contract entered
9 into by and between TRMC and PHOENIX ("Stipulation") which is filed concurrently
10 herewith.

11 The Motion is based upon the Notice of Motion and Motion, the Declaration of
12 Sanford Haskins, the Stipulation and exhibit thereto, the files, pleadings and orders on
13 file on this Chapter 9 case, and such other and further evidence as made properly come
14 before the court.

15 TRMC respectfully requests that this Court enter an order pursuant to 11 U.S.C.
16 §§ 365 and 901 authorizing the Debtor to assume the Agreement pursuant to the
17 Stipulation and to perform all obligations thereunder, and seeks such further and
18 additional relief as is just and proper under the circumstances. No prior motion for the
19 relief requested herein as to the subject Agreement has been made to this Court.
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21

I. BACKGROUND

22 1. On September 30, 2017 (the "Petition Date"), TRMC filed a voluntary
23 petition for relief under Chapter 9 of the title 11 of the U.S. Code.

24 2. Prior to the Petition Date, TRMC and PHOENIX entered into an Integrated
25 Information Technology Outsourcing and Consulting Agreement dated June 25, 2015
26 (as amended, the "Contract"), pursuant to which PHOENIX has been providing TRMC
27
28

1 with information technology outsourcing (including on-site resources), consulting, and
2 related services. TRMC and PHOENIX have agreed to certain revisions to the Contract
3 as memorialized in the Fifth Amendment to the Integrated Information Technology
4 Outsourcing and Consulting Agreement dated January 9, 2018 (the "Fifth Amendment")
5 and, together with the Contract, the "Agreement").
6

7 3. TRMC has evaluated the Agreement and considered its financial position
8 using its best business judgment and has determined that the Agreement is essential to
9 TRMC's operations, which require the provision of extensive information technology
10 services, and therefore its intended plan of adjustment, and that the prices for the
11 services provided under the Agreement are fair and reasonable under the
12 circumstances. Further, in order to maximize its ability to propose a Plan of Adjustment
13 TRMC believes the Agreement should be assumed.
14

15 4. Accordingly, TRMC and PHOENIX have entered into the Stipulation which
16 provides for assumption of the Agreement.

17 II. THE STIPULATION

18 The Stipulation which attaches the Agreement is filed concurrently herewith and
19 is summarized as follows:
20

21 5. The Agreement is assumed by TRMC effective upon Court approval.

22 6. TRMC's obligations under 11 U.S.C. § 365(b) are fulfilled by TRMC's
23 compliance with the obligations as set forth in the Agreement.

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7. PHOENIX has not waived and has accrued an allowed administrative expense claim for services rendered to TRMC after the Petition Date. The Parties will use their best efforts to compute the amount of such an administrative expense claim in advance of the TRMC's preparation of its plan of adjustment and, if not so resolved, PHOENIX has reserved its right to move the Court for payment thereof.

III. RELIEF REQUESTED

By this Motion, TRMC seeks entry of an order, pursuant to 11 U.S.C. §§ 365 and 901 authorizing assumption of the Agreement pursuant to the Stipulation. TRMC believes that maintaining the Agreement as part of its business operations is essential to its intended plan. In deciding to accept the Agreement, TRMC evaluated and considered its financial position and has used its best business judgment.

WHEREFORE, TRMC respectfully requests the entry of an order: (i) authorizing assumption of the Agreement as of the date of this Motion; (ii) granting such other and further relief as this Court deems just and proper.

Dated: January 10, 2018

**WALTER WILHELM LAW GROUP
a Professional corporation**

By:

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Tulare Local Healthcare District, dba
Tulare Regional Medical Center